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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JOHN E. MALORK, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. ERIK ANDERSON, JENNIFER AAKER, JANE KEARNS, PIERRE LAPEYRE, JR., DAVID LEUSCHEN, ROBERT TICHIO, JIM McDERMOTT, JEFFREY TEPPER, MICHAEL WARREN, RIVERSTONE INVESTMENT GROUP LLC, WRG DCRB INVESTORS, LLC, and DECARBONIZATION PLUS ACQUISITION SPONSOR, LLC, Defendants.	C.A. No. 2022-0260-PAF **Public Version Filed: August 29, 2025**

PLAINTIFF'S OPENING BRIEF IN SUPPORT OF MOTION TO APPROVE THE PROPOSED SETTLEMENT, CERTIFY THE CLASS, AND FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARD

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Plaintiff John E. Malork ("Plaintiff"), by and through his undersigned attorneys, individually and on behalf of the Class (defined herein) of former stockholders of Decarbonization Plus Acquisition Corporation ("Decarb"), submits this Opening Brief in Support of Motion to Approve the Proposed Settlement, Certify the Class, and for an Award of Attorneys' Fees and Expenses and Incentive Award, seeking: (i) approval of the proposed settlement (the "Settlement") between (a) Plaintiff, and (b) defendants Erik Anderson, Jennifer Aaker, Jane Kearns, Pierre Lapeyre, Jr., David Leuschen, Robert Tichio, Jim McDermott, Jeffrey Tepper, Michael Warren, Riverstone Investment Group LLC ("Riverstone"), Decarbonization Plus Acquisition Sponsor, LLC ("DCRB Sponsor"), and WRG DCRB Investors, LLC ("WRG") (collectively, the "Settling Defendants," and together with Plaintiff, the "Parties," and each a "Party"), as set forth in the Stipulation and Agreement of Compromise and Settlement, dated June 10, 2025 (D.I. 163) (the "Stipulation"); (ii) certification of the Class for settlement purposes, pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2); (iii) an award of attorneys' fees and expenses; and (iv) a $10,000 incentive award for Plaintiff.

Class Members were given notice of the Settlement in accordance with the Scheduling Order entered by the Court on June 25, 2025 (D.I. 164). To date, there

have been no objections. The Court scheduled a hearing for October 3, 2025, to consider these matters.

PRELIMINARY STATEMENT

Plaintiff brought this action on behalf of himself and former Decarb stockholders who were entitled to, but did not, redeem their shares of Decarb Class A common stock in connection with Decarb's business combination (the "Merger") with Hyzon Motors Inc. ("Legacy Hyzon") (the "Class"). The proposed Settlement is the result of resolute litigation efforts involving significant risk. Plaintiff initiated this action on March 18, 2022, at a time when breach of fiduciary duty actions challenging a de-SPAC merger were in their infancy: The Court's seminal *MultiPlan* decision was just three months old and its *GigAcquisitions3* decision was still nine months away.[1] Unique and unanswered questions permeated at the time of filing and since no *MultiPlan* action has proceeded to trial (or even summary judgment), many remained even as the Parties negotiated the Settlement. Were this litigation to continue, the Court (and Parties) would have had to address these additional novel issues.

Despite the risks, Plaintiff aggressively litigated this Action, repeatedly overcoming roadblocks set up by the Settling Defendants and Hyzon and pivoting as appropriate to comport with developments to the *MultiPlan* landscape. When the

[1] *See In re MultiPlan Corp. S'holder Litig.*, 268 A.3d 784 (Del. Ch. 2022); *Delman v. GigAcquisitions3, LLC*, 288 A.3d 692 (Del. Ch. 2023).

Settling Defendants moved to dismiss Plaintiff's thoroughly-researched initial complaint, Plaintiff drafted and filed a detailed amended complaint sufficient to withstand the Settling Defendants' dismissal efforts (the "First Amended Complaint"). Following the Court's denial of the Settling Defendants' motion to dismiss the First Amended Complaint, the Parties engaged in document and other written discovery from August 2023 through July 2024: (i) Plaintiff propounded requests for the production of documents and interrogatories to the Settling Defendants and served subpoenas *duces tecum* and *ad testificandum* on nine third parties, including the post-Merger combined entity, Hyzon Motors, Inc. ("Hyzon"); (ii) Plaintiff moved to compel certain documents from Hyzon, which the Court granted in part following a telephonic hearing; (iii) the Settling Defendants served responses and objections to Plaintiff's requests for production of documents and interrogatories; (iv) the Settling Defendants, Hyzon, and other third parties produced over 810,000 pages of documents in response to Plaintiff's document requests and subpoenas; (v) the Settling Defendants propounded requests for the production of documents and interrogatories to Plaintiff; (vi) Plaintiff served responses and objections to the Settling Defendants' requests for production and interrogatories; and (vii) Plaintiff produced 3,947 pages of documents in response to the Settling Defendants' document requests. The Settling Defendants deposed Plaintiff on April 3, 2024.

In light of information gleaned from these discovery efforts, Plaintiff brought claims against Legacy Hyzon and Craig M. Knight (the "Legacy Hyzon Defendants") for allegedly aiding and abetting the Settling Defendants' alleged breaches of fiduciary duty (the "Second Amended Complaint"). Plaintiff's efforts ultimately proved futile due to Hyzon's rapidly declining financial condition. In late 2024, Hyzon's Board of Directors (the "Board") determined Hyzon was unsalvageable. On December 20, 2024, Hyzon announced that its Board approved a plan of dissolution, subject to stockholder approval.[2] On March 25, 2025, Hyzon's stockholders approved the transfer of all or substantially all of the Company's assets through an assignment for the benefit of creditors and its liquidation and dissolution.[3] In light of Hyzon dissolving, on May 14, 2025, Plaintiff and the Legacy Hyzon Defendants stipulated to voluntarily dismiss the Legacy Hyzon Defendants, which the Court granted that same day.

With document discovery nearing completion, the Parties participated in a full-day mediation before Robert Meyer (the "Mediator") of JAMS. The mediation concluded with an agreement in principle to settle the Released Plaintiff's Claims in exchange for an $8.8 million payment to the Class, subject to Court approval.

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[2] https://investors.hyzonfuelcell.com/news/news-details/2025/Hyzon-Announces-Stockholder-Approval-of-Assignment-Proposal-and-Dissolution-Proposal/default.aspx.

[3] *Id.*

Plaintiff respectfully submits that the Settlement should be approved as fair, reasonable, and adequate. The $8.8 million Settlement compares favorably to what Plaintiff and the Class could have recovered had they taken the case to trial. Plaintiff's simplest path to establishing damages at trial—taking the difference between the $10 redemption price and the $7.28 net cash per share[4] Decarb contributed to the Merger and multiplying it by the 20,483,179 non-redeemed Class shares—yields $55,714,246 in total Class damages. The Settlement represents approximately 15.8% of these potential damages, which is in line with the net cash per share damages recovery that this Court approved in *Finserv*.[5] In the event only nominal damages are available to the Class, the Court has explained that they may range from $0.50 per share to $2.00 per share, here equating to damages of between $10.24 million and $41 million.[6] The Settlement represents a recovery of between 21% and 86% of the potential nominal damages.

Plaintiff further submits that an all-in award of $1.76 million for attorneys' fees and expenses (*i.e.*, 20% of the Settlement Amount) is appropriate here. The

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[4] The SPAC's net cash per share is a reasonable estimate of what a counterparty would be willing to pay or give up in the exchange.

[5] *See, e.g.*, *In re Finserv Acquisition Corp. SPAC Litig.*, C.A. No. 2022-0755-PAF (Del. Ch. Oct. 10, 2024) (TRANSCRIPT) ("*Finserv* Tr.") (approving settlement that provided 15.7% of potential net cash per share damages).

[6] *In re Columbia Pipeline Grp., Inc. Merger Litig.*, 299 A.3d 393, 409 (Del. Ch. 2023).

Settlement marks the culmination of hard-fought litigation challenging Defendants' impairment of the Class's redemption rights—all undertaken on a fully contingent basis. Given (i) that Plaintiff successfully overcame the Settling Defendants' motion to dismiss; (ii) the extensive documents and discovery material that Plaintiff needed to obtain, review, produce, and analyze; (iii) the discovery motion practice Plaintiff was forced to undertake; and (iv) the deposition, Plaintiff was required to prepare for and participate in, Plaintiff respectfully submits his counsel engaged in "meaningful litigation efforts" for which fees in the amount of 15% to 25% are typically awarded.

Finally, Plaintiff requests that the Court approve the payment of a $10,000 incentive award to Plaintiff out of any attorneys' fees awarded to reward him for his role in this Action. This amount is warranted due to Plaintiff standing in for the Class and subjecting himself to the Settling Defendants' discovery, including the preparation of answers and objections to the requests for production and interrogatories propounded by the Settling Defendants, the search of his records for responsive materials, and the preparation for and taking of his deposition.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Defendants Create Decarb

Riverstone is one of the country's most prolific "clean energy" SPAC sponsors, having launched at least seven blank check companies under the "Decarbonization"

and "Silver Run" banners since 2015.[7] Riverstone was controlled by Lapeyre and Leuschen, its co-founders, and Tichio, its managing partner.[8] Riverstone founded and controlled DCRB Sponsor.[9]

In 2017, DCRB Sponsor incorporated Silver Run Acquisition Corporation III ("Silver Run") in Delaware as a blank check company for the purpose of effecting a merger, capital stock-exchange, asset acquisition, share purchase, reorganization, or similar business combination.[10] On August 18, 2020, Silver Run changed its name to Decarbonization Plus Acquisition Corporation ("Decarb").[11] Initially, Tichio served as Decarb's CEO and sole director, where he was responsible for sourcing, negotiating, and executing a business combination for Decarb.[12]

On August 19, 2020, Decarb submitted to the SEC a preliminary Registration Statement for an IPO on Form S-1.[13] The filing noted that Anderson, Lapeyre, and

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[7] ¶ 43. All citations herein to "¶ __" are to the Verified Second Amended Class Action Complaint (D.I. 133) ("Second Amended Complaint"). All capitalized terms not defined herein shall have the meaning ascribed in the Second Amended Complaint or the Stipulation.

[8] ¶ 55.

[9] ¶ 30.

[10] ¶ 44.

[11] *Id.*

[12] ¶¶ 45-46.

[13] ¶ 47.

Leuschen would join the Board upon completion of the IPO, with Anderson serving as the new CEO of Decarb.[14] Anderson also created WRG which purchased and held Founder Shares for Anderson's benefit.[15] The filing further noted that McDermott and Tepper were joining the Board upon completion of the IPO.[16] On September 22, 2020, Decarb filed with the SEC an amendment to the Registration Statement, which stated that Aaker, Kearns, and Warren would be added to the Board upon completion of the IPO.

Defendants took Decarb public on February 8, 2021, selling 22,572,502 units at $10 per share, raising proceeds of $225,725,020, including the underwriters' partial exercise of overallotment.[17] Each unit consisted of one share of Decarb Class A common stock and one-half of one warrant.[18]

Prior to Decarb's IPO, DCRB Sponsor, Riverstone, and WRG, in their capacities as Decarb's controlling stockholders, caused Decarb to issue 5,643,125 Founder Shares to the Sponsor in exchange for $25,000.[19] DCRB Sponsor then

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[14] *Id.*

[15] ¶ 32.

[16] ¶ 47.

[17] ¶ 49.

[18] *Id.*

[19] ¶ 1.

granted 1,064,329 of those Founder Shares to Aaker, Kearns, McDermott, Tepper, Warren, and Anderson.[20] Concurrently with Decarb's IPO, DCRB Sponsor, Aaker, Kearns, McDermott, Tepper, Warren, and WRG purchased 6,514,500 warrants in a private placement for $6,514,500 (or $1.00 per warrant) (the "Private Placement Warrants").[21]

The cash raised in Decarb's IPO was placed in a trust and held for the benefit of public stockholders. If Decarb entered into a business combination, public stockholders would have the opportunity to redeem some or all of their Decarb Class A common stock for $10 per share plus interest.[22] If Decarb failed to enter into a merger and liquidate, stockholders would receive the same.[23] Defendants had 24 months from the IPO to complete a business combination or their Founder Shares and warrants would expire as worthless.[24]

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[20] *Id.*

[21] ¶ 2.

[22] ¶ 1.

[23] ¶¶ 1, 53.

[24] ¶ 1.

B. Defendants Cause Decarb to Acquire Legacy Hyzon

On October 30, 2020, Anderson and Tichio met with Goldman Sachs' bankers regarding a possible transaction between Decarb and Legacy Hyzon.[25] Legacy Hyzon was allegedly a cutting-edge company engaged in the design, development, and manufacture of hydrogen fuel cell powered commercial vehicles.[26] From November 2020 to January 2021, Decarb conducted due diligence related to Legacy Hyzon while simultaneously negotiating the terms of the Merger.[27]

On February 8, 2021, the Board unanimously approved the Merger.[28] The next morning, February 9, 2021, Decarb and Legacy Hyzon announced the Merger and related financing transactions.[29] In order to garner investor support for the Merger, the Settling Defendants made presentations to investors about the claimed benefits of the Merger and about Legacy Hyzon and its prospects, which they filed with the SEC on February 9, 2021 (the "February Investor Presentation") and April 29, 2021 (the

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[25] ¶ 67.

[26] ¶ 29.

[27] ¶ 67.

[28] ¶ 73.

[29] *Id.*

"April Investor Presentation," collectively with the February Investor Presentation, the "Investor Presentations").[30]

The Investor Presentations were riddled with misleading statements and omissions of material information. To start, the Investor Presentations claimed that Legacy Hyzon would increase its vehicle deliveries from 85 in 2021 to 9,860 by 2025 and would exponentially grow its revenues from an estimated $37 million in 2021 to nearly $3.3 billion by 2025.[31] The Settling Defendants misrepresented that the projections were supported by a strong demand for Legacy Hyzon's hydrogen fuel vehicles due to a long list of customers with signed orders that did not exist.[32] The February Investor Presentation, in particular, claimed that nearly a quarter of Legacy Hyzon's projected sales for 2021 were "100% certain." In truth, however, Legacy Hyzon had not converted any of the global recognized brands listed in the February Investor Presentation into actual customers, making its sales projections far from certain.[33]

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[30] ¶¶ 83, 93.

[31] ¶¶ 5, 88-89, 104-114.

[32] ¶¶ 6, 89. For instance, the Settling Defendants misleadingly labeled a future channel partner as a "customer." The contract Legacy Hyzon entered into with this entity gave the entity the option, not the obligation, to purchase vehicles from Legacy Hyzon that it would then pass through to end users (the true buyers).

[33] ¶¶ 11, 88-91, 104-114.

The Settling Defendants also falsely represented in the Investor Presentations that Legacy Hyzon had a "proven fuel cell technology with superior competitive performance against other fuel cell products" and the "[h]ighest power density of any fuel cell available today," with the February Investor Presentation claiming that Legacy Hyzon had a "[c]lear [t]echnological [l]ead over [c]ompetitors."[34] As later revealed by a third party who reviewed the data behind Legacy Hyzon's technological superiority claims, Legacy Hyzon's existing product at the time of the Investor Presentations underperformed most of its peers.[35]

On June 21, 2021, Decarb set the stockholder meeting to vote on the Merger for July 15, 2021, with a record date set as June 1, 2021.[36] Separate and distinct from their right to vote on the Merger, Decarb's Class A stockholders had the option to invest in post-Merger Hyzon or "redeem" their Decarb stock and receive their $10 per share investment, plus interest, back from Decarb. Decarb Class A stockholders had until July 13, 2021, to exercise their redemption right.

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[34] ¶¶ 8, 84-86.

[35] ¶¶ 86, 125, 131, 154.

[36] ¶ 76.

On June 21, 2021, the Settling Defendants filed the Merger Proxy with the SEC, soliciting Decarb stockholders' vote in favor of the Merger.[37] The Merger Proxy was also replete with false statements and omissions of facts concerning the value of Decarb's stock and Legacy Hyzon's financial prospects, customer base, and technology that were material to the Decarb Class A stockholders' redemption decision.[38] The Merger Proxy contained many of the same statements as the Investor Presentations, including the unrealistic vehicle delivery projections and the related misleading financial projections that accompanied the vehicle delivery projections.[39] Finally, the Merger Proxy misled investors into believing that Tichio did not have a financial interest in the outcome of a de-SPAC transaction by Decarb, when in fact Tichio held interests in Riverstone and was therefore a beneficial owner of the Founder Shares held by the Sponsor.[40]

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[37] *Id.*

[38] ¶¶ 79-114.

[39] ¶ 99.

[40] ¶ 101.

Defendants' representations achieved their intended result. Decarb stockholders approved the Merger on July 15, 2021.[41] Less than 10% of Decarb's outside investors redeemed their Class A shares.[42]

C. Post-Merger Developments Reveal the Truth

Just two months after the Merger, on September 28, 2021, research firm Blue Orca published a report (the "Blue Orca Report") characterizing Legacy Hyzon as "a zero-revenue hydrogen EV SPAC which we liken to a Chinese Lordstown Motors."[43] In the Blue Orca Report, the author exposed Legacy Hyzon as "just a repackaging of a flailing Chinese parent company which has been trying to sell the same hydrogen fuel cells without much success for 17 years" and whose "supposed major customers" are "fake."[44] The Blue Orca Report highlighted facts that were either omitted or misleadingly characterized in the Merger Proxy and the Settling Defendants' other public representations concerning the Merger.[45]

Less than two weeks later, on October 6, 2021, Iceberg Research published its own research report expressing agreement with each of the Blue Orca Report's key

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41 ¶ 102.

42 *Id.*

43 ¶ 116.

44 *Id.*

45 *Id.*

findings and providing additional support for Blue Orca's conclusions.[46] The Iceberg Research Report revealed that Legacy Hyzon's "parent Horizon Fuel Cell Technologies Pte Ltd ('Horizon') saw its 2019 sales surge, thanks to one customer," that "this client was in financial trouble by the end of the year," and that "[t]his was never disclosed" by Legacy Hyzon. The Iceberg Research Report further stated that "Hyzon's corporate governance puts its minority shareholders at risk" because "Horizon holds the largest block of Hyzon shares, and controls both management and the board of the two entities." On November 16, 2021, Iceberg Research published a second report addressing Legacy Hyzon's 2021 forecast in the February Investor Presentation and Merger Proxy, stating that Legacy Hyzon projected to sell 85 vehicles and generate $37 million in revenue that year.[47] On January 12, 2022, Hyzon disclosed that the SEC had opened a formal investigation into the disclosures related to the issues raised in the Blue Orca Report.[48]

In the wake of the Blue Orca Report, the Iceberg Research Reports, and the SEC investigation, the market price of Hyzon stock plummeted during late 2021 and into 2022, and continued to decline precipitously thereafter. On March 18, 2022, the

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[46] ¶ 123.

[47] ¶ 126.

[48] ¶ 127.

day Plaintiff filed his initial complaint, Hyzon's stock traded at $5.87 per share. By the time Plaintiff filed his Second Amended Complaint on August 13, 2024, Hyzon's stock traded below $0.50 per share, or 95% below the IPO price of $10.00 per share.[49]

On March 30, 2022, Hyzon filed with the SEC its 2021 Form 10-K, disclosing that it had only delivered 87 vehicles during 2021 for a contract value of $19.6 million, less than half of the projected $37 million the Settling Defendants claimed pre-Merger in the Investor Presentations and Merger Proxy. Even that paltry amount overstated Hyzon's revenue, however. Hyzon's independent outside auditors would not permit Hyzon to recognize the full contract values of those vehicles due to collection concerns. Accordingly, Hyzon reported only $6 million in sales for 2021.

On April 12, 2022, *The Wall Street Journal* reported that Hyzon CFO Mark Gordon was resigning following the announcement of the SEC investigation into Blue Orca Report's claims that "some orders for Hyzon vehicles weren't real."[50] *The Wall Street Journal* also noted that Hyzon had only reported $6 million in revenues for fiscal 2021.[51] *The Wall Street Journal* further stated that Hyzon only "expects to

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[49] ¶ 128.

[50] ¶ 134.

[51] *Id.*

deliver 300 to 400 vehicles this year" (2022), substantially less than the 658 vehicles that Hyzon stated in the Merger Proxy it was on track to deliver during 2022.

On September 9, 2023, the SEC filed a complaint against Legacy Hyzon and Craig M. Knight ("Knight") in the U.S. District Court for the Western District of New York.[52] The SEC Complaint alleged that, in connection with seeking stockholder support in favor of the Merger, Legacy Hyzon, Knight, and Max C.B. Holthausen ("Holthausen") misrepresented the status of its business dealings with potential customers and suppliers to create the appearance that significant sales transactions were imminent.[53] The SEC Complaint further alleged that following the Merger, Legacy Hyzon, Knight, and Holthausen: (i) falsely stated that Legacy Hyzon had delivered its first FCEV in July 2021, even going as far as posting a misleading video of the vehicle purportedly running on hydrogen, when the vehicle was not equipped to operate on hydrogen power; and (ii) falsely reported that Legacy Hyzon sold 87 FCEVs in 2021, when in fact it had not sold any vehicles that year.[54]

Then, on September 27, 2023, the SEC announced that Legacy Hyzon, Knight, and Holthausen each consented to permanent injunctions and to pay $25 million,

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[52] ¶ 137.

[53] *Id.*

[54] *Id.*

$100,000, and $200,000, respectively, in civil penalties.[55] As a result of the SEC Settlement, Knight and Holthausen were barred from serving as officers or directors of a publicly traded company for a period of five and ten years, respectively.[56] Finally, Knight and Legacy Hyzon's former CFO, Mark Gordon, agreed to voluntarily return $252,000 and $122,500, respectively, to Hyzon from incentive compensation they previously received.[57]

D. Plaintiff Files Suit, Prosecutes the Action, and Pursues Discovery

Plaintiff initiated this Action on March 18, 2022, filing a verified class action complaint on behalf of himself and all similarly situated former Decarb stockholders, asserting claims for breach of fiduciary duty in connection with the impairment of the Class's redemption rights. The Settling Defendants filed a motion to dismiss on May 26, 2022.[58]

Plaintiff filed an amended complaint on August 2, 2022 (the "First Amended Complaint"), reasserting these breach of fiduciary duty claims.[59] On October 3, 2022,

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[55] ¶ 138.

[56] *Id.*

[57] *Id.*

[58] D.I. 26.

[59] D.I. 31.

the Settling Defendants again moved to dismiss.[60] Among other things, Defendants argued that the Court's recent decision in *Multiplan* did not apply in this matter because in *Multiplan* the right to redeem was connected to a stockholder voting, whereas in this Action voting and redemption were divorced from each other. The Settling Defendants also challenged whether the First Amended Complaint adequately alleged any materially false or misleading statements or omissions in the Proxy, including claims relating to Hyzon's sales projections, customer relationships, and purported loss of customers. The Settling Defendants also argued that founder share incentives and other SPAC features did not create disabling conflicts sufficient to trigger entire fairness review. Finally, the Settling Defendants contended that any claims against the directors were barred by exculpation. Plaintiff opposed the Settling Defendants' motion on November 22, 2022, and the Settling Defendants filed their reply on December 22, 2022.[61] On January 5, 2023, shortly before the hearing on the Settling Defendants' motion, Plaintiff submitted the Court's then-recent decision denying the motion to dismiss in *Delman v. GigAcquisitions3, LLC*, C.A. No. 2021-0679-LWW as supplemental authority in support of his opposition.[62]

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[60] D.I. 35.

[61] D.I. 38, 42.

[62] D.I. 44.

The Court postponed the hearing on the Settling Defendants' motion to dismiss and requested supplemental briefing addressing *GigAcquisitions3*, C.A. No. 2021-0679-LWW, which the Parties submitted on February 3, 2023.[63]

In light of the *GigAcquisitions3* decision, on January 24, 2023, Plaintiff sought leave to supplement his First Amended Complaint.[64] The Settling Defendants opposed Plaintiff's motion for leave on February 7, 2023, and Plaintiff filed his reply on February 14, 2023.[65] On March 2, 2023, following a hearing, the Court denied Plaintiff's motion to supplement.[66]

The Court heard argument on the Settling Defendants' motion to dismiss the First Amended Complaint on April 21, 2023 and took the matter under advisement. Plaintiff submitted the then-recent order by Chancellor McCormick denying the motion to dismiss, in substantial part, in *In re XL Fleet (Pivotal) Stockholder Litigation*, C.A. No. 2021-0808-KSJM (Del. Ch. June 9, 2023), as additional supplemental authority on June 16, 2023.[67] On July 17, 2023, the Court denied Defendants' motion to dismiss, finding that Plaintiff had adequately alleged a

[63] D.I. 57-58.

[64] D.I. 54.

[65] D.I. 61, 63.

[66] D.I. 65.

[67] D.I. 73.

reasonably conceivable claim that the redemption rights of public stockholders were impaired by materially misleading disclosures in the Proxy.[68] The Court held Plaintiff adequately alleged a direct claim that the Settling Defendants' false and misleading claims, statements, and omissions concerning Hyzon's customer pipeline and projected revenues impaired the Class's redemption decision.[69] The Court further concluded that, at the pleading stage, the alleged conflicts arising from the Sponsor's incentives and the Board's approval of the transaction warranted application of entire fairness review.[70]

Discovery proceeded thereafter. The Settling Defendants answered the First Amended Complaint on September 8, 2023.[71] The Court approved the Parties' stipulated case schedule on September 22, 2023, setting the close of discovery for September 27, 2024, and trial for April 7-11, 2025.[72] On October 4, 2023, the Court granted a stipulation governing expert discovery and, on October 9, 2023, the Court

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[68] *See generally Malork v. Anderson*, C.A. No. 2022-0260-PAF (Del. Ch. July 17, 2023) (TRANSCRIPT) ("*Hyzon* Tr.").

[69] *Id.* at 6-20, 32-40.

[70] *Id.* at 24-30.

[71] D.I. 79.

[72] D.I. 82.

granted a stipulation governing the production and exchange of confidential information.[73]

From August 2023 through July 2024, the Parties engaged in substantial fact discovery. Plaintiff served document requests and interrogatories on the Settling Defendants and issued subpoenas *duces tecum* and *ad testificandum* to nine third parties. In response, the Settling Defendants and various third parties, including Hyzon, produced over 810,000 pages of documents. The Settling Defendants served their own discovery requests and interrogatories on Plaintiff, who responded by producing 3,947 pages of documents and answered 40 interrogatories. The Settling Defendants deposed Plaintiff on April 3, 2024.

Discovery also gave rise to motion practice. On December 1, 2023, Plaintiff moved to compel documents from Hyzon.[74] Hyzon opposed Plaintiff's motion to compel on January 25, 2024, and Plaintiff filed his reply on February 9, 2024.[75] Following a telephonic hearing on March 7, 2024, the Court granted Plaintiff's motion in part and denied it in part, ordering, among other things, Hyzon to produce certain documents produced to the SEC and gathered in response to an investigation by the

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[73] D.I. 87.

[74] D.I. 91.

[75] D.I. 96, 100.

special committee of Hyzon's Board after the Parties meet and confer on search terms.[76]

Plaintiff sought leave to file a verified second amended class action complaint ("Second Amended Complaint") on July 15, 2024.[77] The Second Amended Complaint reasserted the claims in the First Amended Complaint, and: (i) asserted a new claim for unjust enrichment against the Defendants; (ii) asserted new claims against Hyzon and Knight (the "Hyzon Defendants") for aiding and abetting the Settling Defendants' breaches of fiduciary duty; (iii) included additional information concerning the misleading nature of the Merger Proxy, such as Tichio's financial and controlling interests in DCRB Sponsor and Decarb and the material misstatements and omissions concerning the value of Decarb stock that would be contributed to the Merger; and (iv) included additional information concerning the results of the investigations conducted by the SEC and Hyzon's special committee, which led to the SEC Settlement.[78]

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[76] D.I. 119.

[77] D.I. 129.

[78] D.I. 133.

On November 8, 2024, Hyzon moved to dismiss Plaintiff's Second Amended Complaint.[79] Knight joined the motion and adopted the arguments set forth by Hyzon.[80]

Hyzon's financial health continued to deteriorate throughout the second half of 2024. On December 20, 2024, Hyzon announced that its Board had approved the plan of dissolution and that it was seeking stockholder approval of the Assignment Proposal and the Dissolution Proposal.[81] On March 25, 2025, Hyzon's stockholders voted to approve the transfer of all or substantially all of the Company's assets through an assignment for the benefit of creditors (the "Assignment," and such proposal, the "Assignment Proposal") and the liquidation and dissolution of the Company pursuant to a plan of dissolution.[82] On April 7, 2025, Hyzon and certain of its affiliates executed a General Assignment to Hyzon ABC.[83] That same day, Hyzon ABC filed a Verified Petition for Assignment for the Benefit of Creditors in this Court

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[79] D.I. 152.

[80] D.I. 156.

[81] https://investors.hyzonfuelcell.com/news/news-details/2025/Hyzon-Announces-Stockholder-Approval-of-Assignment-Proposal-and-Dissolution-Proposal/

[82] *Id.*

[83] *See* Stipulation and Proposed Order of Voluntary Dismissal Without Prejudice as to Defendants Craig M. Knight and Hyzon Motors Inc. at 2 (Trans. ID 76272620)

(the "*ABC* Action").[84] On April 15, 2025, the Court in the *ABC* Action entered an order governing the Assignment for the Benefit of Creditors.[85]

On May 14, 2025, in light of these developments, Plaintiff and the Legacy Hyzon Defendants filed a stipulation of voluntary dismissal without prejudice, which the Court granted the same day.[86]

E. The Parties Engage in Mediation and Negotiate the Settlement

Informed by the substantial discovery produced and reviewed to date, Plaintiff and the Settling Defendants explored resolution. On July 31, 2024, the Parties exchanged mediation statements and participated in a full-day mediation session conducted by Robert Meyer, a well-regarded neutral with JAMS, who has over twelve years of experience mediating complex business disputes ("Mediator"). With the Mediator's assistance, the Parties reached an agreement in principle at the conclusion of the mediation to settle the Released Plaintiff's Claims for $8.8 million in cash, subject to Court approval. The material terms of the Settlement were later memorialized in the Stipulation, which did not include the Legacy Hyzon Defendants. Plaintiff and the Settling Defendants executed the Stipulation on June 10, 2025.

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[84] *Id.*

[85] *Id.*

[86] D.I. 162.

ARGUMENT

I. THE CLASS SHOULD BE CERTIFIED

Chancery Court Rule 23 sets forth the requirements for class certification. The preliminarily certified settlement class, as defined in the Stipulation, consists of:

> All Persons who held shares of Decarb Class A common stock as of the Redemption Deadline, either of record or beneficially, and who did not redeem all of their shares, including their heirs, successors-in-interest, successors, transferees, and assigns, but excluding the Excluded Persons.

On July 9, 2025, roughly a month after the Stipulation was executed, the Court issued a decision in *In re TS Innovation Acquisitions Sponsor, LLC S'holder Litig.*, Consol. C.A. No. 2023-0509-LWW, in which it analyzed a similar settlement class definition and explained that, unless the class definition specified that it encompassed only successors in interest "who obtained shares by operation of law," the definition was "overbroad."[87] Consistent with *TS Innovation*, the Parties have agreed to modify the settlement class, subject to Court approval. Accordingly, Plaintiff moves the Court for certification of a non-opt-out Class for settlement purposes only pursuant to Rules 23(a), 23(b)(1), and 23(b)(2) consisting of:

> [A]ll Persons who held shares of Decarb Class A common stock as of the Redemption Deadline, either of record or beneficially, and who did not redeem all of their shares, including their successors-in-interest who

[87] *TS Innovation*, letter op. at 4-5.

> obtained shares by operation of law, but excluding the Excluded Persons.[88]

The Excluded Persons continues to mean:

> Erik Anderson, Jennifer Aaker, Jane Kearns, Pierre Lapeyre, Jr., David Leuschen, Robert Tichio, Jim McDermott, Jeffrey Tepper, Michael Warren, Riverstone, DCRB Sponsor, WRG, Legacy Hyzon, and Knight, as well as the members of their immediate families, and any entity in which any of them has a controlling interest, and the heirs, successors, or assignees of any such excluded party, including any trusts, estates, entities, or accounts that held shares of Decarb for the benefit of any of the foregoing.

This adjustment to the Class definition merely clarifies the membership in the Class, rather than alter it, and thus does "not constitute a material change to the [S]ettlement" that would necessitate supplemental notice to the Class.[89]

Certification of this Class is appropriate because this Action satisfies Rule 23(a) and fits "within the framework provided for in subsection (b)."[90] Indeed, "[t]his is a classic type of situation for a Rule 23 certification."[91]

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[88] Plaintiff submits with this Motion as Exhibit 1, a Revised [Proposed] Order and Final Judgment, reflecting the revised Class definition, and as Exhibit 2, a redline reflecting the edits made against the original [Proposed] Order and Final Judgment. Plaintiff will post the Revised [Proposed] Order and Final Judgment, along with this motion, to the Settlement website.

[89] *TS Innovation*, July 9, 2025 Letter Ruling; *see also In re Kensington-QuantumScape De-SPAC Deriv. Litig.*, 2025 WL 1927921, at *2 (Del. Ch. July 11, 2025) (ORDER AND FINAL JUDGMENT) (certifying settlement class with similar revision to class definition); *Drulias v. Apex Tech. Sponsor, LLC*, 2025 WL 1913626, at *2 (Del. Ch. July 10, 2025) (ORDER AND FINAL JUDGMENT) (same).

[90] *Nottingham Partners v. Dana*, 564 A.2d 1089, 1095 (Del. 1989).

A. The Class Satisfies Rule 23(a)

For a class to be certified, "(i) the class [must be] so numerous that joinder of all members is impracticable; (ii) there [must be] questions of law or fact common to the class; (iii) the claims or defenses of the representative parties [must be] typical of the claims or defenses of the class; and (iv) the representative parties [must] fairly and adequately protect the interests of the class."[92]

1. The Class Is Sufficiently Numerous

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable."[93] "'[N]umbers in the proposed class in excess of forty, and particularly in excess of one hundred, have sustained the numerosity requirement.'"[94] "The test is not whether joinder of all the putative class members would be impossible, but whether joinder would be practical."[95] As of the Redemption Deadline, July 13, 2021, there were 22,572,502 shares of Kensington Class A common stock issued and outstanding. Just 2,089,323 of those shares were

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[91] *Paul Berger Revocable Trust v. Falcon Equity Investors LLC, et al.*, C.A. No. 2023-0820-JTL, at 36 (Del. Ch. Jan. 21, 2025) (TRANSCRIPT).

[92] Ct. Ch. R. 23(a).

[93] *Id.*

[94] *Marie Raymond Revocable Tr. v. MAT Five LLC*, 980 A.2d 388, 400 (Del. Ch. 2008) (quoting *Smith v. Hercules, Inc.*, 2003 WL 1580603, at *4 (Del. Super. Ct. Jan. 31, 2003)).

[95] *Id*.

redeemed in connection with the Merger. Accordingly, the proposed Class consists of holders of 20,483,179 Decarb Class A common stock shares. Joinder of the likely thousands of holders of those shares is not practical.

2. There Are Issues of Law and Fact Common to All Class Members

Commonality is "met where the question of law linking the class members is substantially related to the resolution of the litigation even though the individuals are not identically situated."[96] Here, common questions of law and fact include whether the Settling Defendants: (i) breached their fiduciary duties by impairing stockholder redemption rights; (ii) failed to disclose material information and/or made materially misleading statements in the Proxy and the Investor Presentations in connection with Merger; (iii) undertook an unfair Merger process at an unfair price; (iv) unjustly enriched themselves by securing unique financial benefits to the detriment of public stockholders; and (v) injured Plaintiff and other Class Members through their conduct. Since this Action involves claims that "implicate the interests of all members of the proposed class of [stock]holders," commonality is satisfied.[97] Indeed, this Court has consistently certified classes in analogous circumstances.[98]

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[96] *Leon N. Weiner & Assocs., Inc. v. Krapf*, 584 A.2d 1220, 1225 (Del. 1991) (citations and internal quotation marks omitted).

[97] *In re Lawson Software, Inc.*, 2011 WL 2185613, at *2 (Del. Ch. May 27, 2011); *see also Hynson v. Drummond Coal Co.*, 601 A.2d 570, 575 (Del. Ch. 1991) ("An action seeking to

3. Plaintiff's Claims Are Typical of the Class

"The test of typicality is that the legal and factual position of the class representative must not be markedly different from that of the members of the class" and "focuses on whether the class representative claim (or defense) fairly presents the issues on behalf of the represented class."[99] Plaintiff is similarly situated to the other unaffiliated Decarb stockholders who did not redeem their shares, and his claims "arise[] from the same event or course of conduct that gives rise to the claims . . . of other class members and [are] based on the same legal theory."[100]

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prove a breach of [fiduciary] duty is inescapably a true class action" because "[r]elief whether it be by injunction, rescission or an award of money will be determined by reference to the effects of the fiduciary's wrong on . . . the corporation or all of its stockholders as a class.").

[98] *See, e.g.*, *In re MultiPlan Corp. S'holders Litig.*, 2023 WL 2329706, at *2 (Del. Ch. Mar. 1, 2023) (certifying a non-opt-out class pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2)); *Finserv* Tr. (same); *In re GeneDX De-SPAC Litig.*, 2024 WL 4952176, at *1 (Del. Ch. Dec. 2, 2024) (same); *Siseles v. Lutnick*, 2024 WL 5046087, at *1 (Del. Ch. Dec. 6, 2024) (same).

[99] *Leon N. Weiner & Assocs., Inc.*, 584 A.2d at 1225-26 (citations and internal quotation marks omitted).

[100] *Id*. at 1226 (citation and internal quotation marks omitted).

4. Plaintiff has Fairly and Adequately Protected the Interests of the Class

Rule 23(a)(4) requires that "'the representative parties will fairly and adequately protect the interests of the class.'"[101] There is no divergence of interest between Plaintiff and absent Class Members. Moreover, the recovery achieved through this litigation demonstrates that Plaintiff's interests were aligned with those of absent Class Members and is likewise indicative of the competence and effectiveness of Plaintiff's Counsel.[102]

B. Certification Is Proper Under Rules 23(b)(1) and 23(b)(2)

To be certified, a proposed class must also "fit[] into one of the three categories specified in Court of Chancery Rule 23(b)."[103] "Delaware courts 'repeatedly have held that actions challenging the propriety of director conduct in carrying out corporate transactions are properly certifiable under both subdivisions (b)(1) and (b)(2).'"[104] Because this is such an action, it should be so certified. A class may be certified under Rule 23(b)(1) where: (i) the prosecution of separate actions by or

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[101] *Nottingham*, 564 A.2d at 1094-95.

[102] *See Haverhill Ret. Sys. v. Kerley*, C.A. No. 11149-VCL, at 20-21 (Del. Ch. Sept. 28, 2017) (TRANSCRIPT) ("*Haverhill* Tr.") ("Given that I am approving the settlement as fair and adequate, it follows that I necessarily believe that the class representatives, as well as the derivative action representatives, provided adequate representation in this matter.").

[103] *In re Ebix, Inc. S'holder Litig.*, 2018 WL 3570126, at *4 (Del. Ch. July 17, 2018).

[104] *In re Celera Corp. S'holder Litig.*, 59 A.3d 418, 432-33 (Del. 2012).

against individual members of the class would create a risk of "'inconsistent or varying adjudications'" which would create incompatible standards of conduct for the opposing party; and (ii) "'adjudications with respect to individual members of the Class'" would as a practical matter be dispositive of the interests of the other members not parties to this Action.[105]

The proposed Class satisfies Rule 23(b)(1). All Class Members are unaffiliated holders of Decarb Class A common stock who suffered the same harm as a result of the Settling Defendants' misconduct. The definition of the Class expressly excludes the Settling Defendants and the Legacy Hyzon Defendants. The relief afforded through the proposed Settlement would impact all stockholders equally, and approval of the proposed Settlement would protect all absent Class Members' interests in uniform fashion.[106]

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[105] *In re Countrywide Corp. S'holder Litig.*, 2009 WL 846019, at *11 (Del. Ch. Mar. 31, 2009) (quoting *Leon N. Weiner & Assocs., Inc.*, 584 A.2d at 1226 n.2).

[106] *See Haverhill* Tr. at 21 ("The class is appropriately certified pursuant to Rule 23(b)(1) as a non-opt-out class, because had this action been prosecuted separately by individual class members, there would have been a risk of inconsistent or varying results, and effectively, adjudication with respect to one would have been dispositive of everyone's interests.").

The Class also satisfies Rule 23(b)(2). The Settling Defendants' actions impacted Class Members in uniform fashion, and the Settlement would afford final relief with respect to the Class as a whole.[107]

C. The Remaining Requirements of Rule 23 Are Satisfied

Rule 23(f) provides that "notice may be given by any appropriate means approved by the Court, including first-class U.S. mail, email, or publication."[108] Notice was provided to all absent Class Members pursuant to the process set forth in the Scheduling Order.[109] To date, no objections have been received.

Pursuant to Rule 23(aa), Plaintiff has sworn that he has not received, been promised, or been offered—and will not accept—any form of compensation, directly or indirectly, for serving as a representative party in this Action, except for: (i) any damages or other relief that the Court may award him as a Class Member; (ii) any fees, costs, or other payments that the Court expressly approves to be paid to him or

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[107] *See generally Nottingham*, 564 A.2d at 1089, 1096-97 (affirming class certification where primary relief in settlement was declaratory, injunctive, and rescissory and thus afforded "similar equitable relief with respect to the class as a whole").

[108] Ct. Ch. R. 23(f).

[109] *See generally* Affidavit of Jack Ewashko Regarding the Dissemination of Notice and Publication of the Summary Notice ("Ewashko Aff.") (filed herewith).

on his behalf; or (iii) reimbursement from his attorneys of actual and reasonable out-of-pocket expenditures incurred in prosecuting the Action.[110]

* * *

For the foregoing reasons, Plaintiff respectfully submits that the Court should certify the Class.

II. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

Delaware law favors the voluntary settlement of complex class actions,[111] reflecting the Court's belief that settlements "promote judicial economy" and that "litigants are generally in the best position to evaluate the strengths and weaknesses" of their respective cases.[112] In reviewing whether a settlement is fair, reasonable, and adequate, the Court analyzes the facts and circumstances underlying the claims and the possible defenses to "'determine whether the settlement falls within a range of results that a reasonable party in the position of the plaintiff, not under any compulsion to settle and with the benefit of the information then available, reasonably

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[110] Affidavit of John E. Malork in Support of Proposed Settlement Approval, at ¶ 5 (filed herewith).

[111] *See, e.g.*, *In re Resorts Int'l S'holders Litig. Appeals*, 570 A.2d 259, 265-66 (Del. 1990); *Rome v. Archer*, 197 A.2d 49, 53 (Del. 1964); *In re Activision Blizzard, Inc. S'holder Litig.*, 124 A.3d 1025, 1042 (Del. Ch. 2015); *In re Triarc Cos. Class & Derivative Litig.*, 791 A.2d 872, 876 (Del. Ch. 2001); *Ryan v. Gifford*, 2009 WL 18143, at *5 (Del. Ch. Jan. 2, 2009); *Kahn v. Sullivan*, 594 A.2d 48, 58 (Del. 1991).

[112] *Marie Raymond Revocable Tr.*, 980 A.2d at 402.

could accept.'"[113] The Court must "make an independent determination, through the exercise of its own business judgment, that the settlement is intrinsically fair and reasonable."[114] Under Rule 23(f)(5), the Court considers whether:

> (A) the representative party and class counsel have adequately represented the class;
>
> (B) adequate notice of the hearing was provided;
>
> (C) the proposed dismissal or settlement was negotiated at arm's length; and
>
> (D) the relief provided for the class falls within a range of reasonableness, taking into account:
>
> (i) the strength of the claims;
>
> (ii) the costs, risks, and delay of trial and appeal;
>
> (iii) the scope of the release; and
>
> (iv) any objections to the proposed dismissal or settlement.[115]

In making this determination, the Court need not "decide any of the issues on the merits,"[116] and ultimately must weigh "the value of all the claims being compromised against the value of the benefit to be conferred on the [c]lass by the settlement."[117]

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[113] *Activision*, 124 A.3d at 1064 (quoting *Forsythe v. ESC Fund Mgmt. Co. (U.S.)*, 2013 WL 458373, at *2 (Del. Ch. Feb. 6, 2013)).

[114] *Goodrich v. E. F. Hutton Group*, 681 A.2d 1039, 1045 (Del. 1996).

[115] Ct. Ch. R. 23(f)(5). This revised rule is consistent with prior law. *See, e.g.*, *Polk v. Good*, 507 A.2d 531, 535-36 (Del. 1986) (setting forth equivalent standards).

[116] *Polk*, 507 A.2d at 536.

For the reasons set forth herein, the Settlement should be approved. The Settlement was the product of hard-fought litigation, informed by Plaintiff's review and analysis of extensive discovery materials, and was negotiated at arm's length with the assistance of an experienced Mediator. The Settlement provides substantial economic consideration to Class Members and reflects Plaintiff's well-informed judgment regarding the strength of the claims and defenses at issue, the potential damages that could be recovered following a trial, and the benefits of a guaranteed recovery.

A. The Relief Provided Falls Within the Range of Reasonableness

In assessing the Settlement, the Court weighs the "give" (the release) against the "get" (the consideration obtained) in order "'to determine whether the settlement falls within a range of results that a reasonable party in the position of the plaintiff, not under any compulsion to settle and with the benefit of the information then available, reasonably could accept.'"[118] The get ($8.8 million) weighs favorably against the give (Released Plaintiff's Claims), particularly given the risks associated with continued litigation.

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[117] *Brinckherhoff v. Texas Eastern Prods. Pipeline Co., LLC*, 986 A.2d 370, 384 (Del. Ch. 2010) (quoting *In re MCA, Inc.*, 598 A.2d 687, 691 (Del. Ch. 1991)).

[118] *Activision*, 124 A.3d at 1064 (quoting *Forsythe*, 2013 WL 458373, at *2).

Plaintiff is confident in the strength of his claims. At trial, Plaintiff's claims would have been reviewed under the entire fairness standard, shifting the burden to the Settling Defendants to "demonstrate that the challenged act or transaction was entirely fair."[119] He also had strong process-based liability claims, making such a showing unlikely.

Although Plaintiff was guardedly optimistic about his chances of prevailing at trial, Plaintiff is well aware that even an entire fairness trial is not a low risk proposition. As this Court noted in *Dell Class V*, in the years since *Americas Mining*, "there have been at least ten post-trial decisions in entire fairness cases where the defendants prevailed, plus three more where the court awarded only nominal damages of $1.00."[120] Moreover, even if Plaintiff were to win at trial, he would have faced "significant risk on appeal" given the reality that, in the six post-*Americas Mining* appeals from post-trial damages awards in which representative plaintiffs obtained cash recoveries and defendants challenged the liability determination that the Supreme Court has heard, "[t]he high court affirmed the first two and reversed the next four."[121]

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[119] *In re Walt Disney Co. Derivative Litig.*, 906 A.2d 27, 52 (Del. 2006).

[120] *In re Dell Techs. Inc. Class V S'holders Litig.*, 300 A.3d 679, 709-10 (Del. Ch. 2023) ("*Dell Class V*").

[121] *Id.* at 710.

Plaintiff (and the Class) faced unique risks. In denying the Settling Defendants' motion to dismiss, the Court expressed skepticism towards Plaintiff's allegations concerning misstatements about Legacy Hyzon's alleged blue-chip customers, noting that "[t]his one is a very close call for me."[122] While the Court ultimately found Plaintiff had adequately alleged a material misstatement related to these alleged customers, it recognized that "discovery may very well show that the difference in the slides was merely an effort to anonymize customers and nothing more. But that must await further developments in the case."[123]

The Court also noted in its motion to dismiss decision that "there's not a whole lot in the complaint regarding whether [the Founder Shares] would be material to the directors."[124] Although the Court held that "it is reasonable to conclude at this stage that this would be a material amount of money," the Settling Defendants had strong arguments that these individuals' net worth and stature in the business community rendered the Founder Shares immaterial to them.[125]

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[122] *Hyzon* Tr.

[123] *Id*. at 39.

[124] *Id*. at 42.

[125] *Id*.

Moreover, the discovery process was not universally positive for Plaintiff. For example, Plaintiff learned through discovery that the Settling Defendants did not materially profit as a result of the Merger, with the Settling Defendants retaining most of their post-Merger Hyzon stock, and therefore suffering Hyzon's stock price decline alongside Class members. According to the Settling Defendants' Interrogatory Responses, [redacted][126]

Discovery also revealed that much of the information in the Investor Presentations and Proxy that Plaintiff alleged was false and misleading came from Legacy Hyzon. As Plaintiff acknowledged in the Second Amended Complaint, "discovery conducted thus far demonstrates that the unauthorized inclusion of the names and logos of certain name brands … came directly from the Legacy Hyzon Defendants…."[127] The Second Amended Complaint further concedes that Legacy Hyzon, not Decarb, supplied the projections that went into the Proxy and Investor Presentations.[128] While Plaintiff believes the Settling Defendants knew or should have known, through reasonable due diligence, about the inaccuracies associated with

[126] Interrogatory Responses at 78.

[127] ¶ 104.

[128] ¶ 11.

the information provided by Legacy Hyzon, it was possible that the Court would have found them to be innocent victims of a deception perpetrated by their counterparties in the Merger.[129]

Despite these risks, Plaintiff was able to secure the Settlement's $8.8 million cash recovery—a per share recovery of approximately $0.43 for each of the 20,483,179 shares included in the Class. The total fund and per share recovery are consistent with recent recoveries in settlements of comparable SPAC cases.[130]

The Settlement also compares favorably to what Plaintiff and the Class could have recovered at trial, particularly given the litigation risks. Although the proper method for determining damages resulting from an impaired redemption right is unsettled, one potential method would be to compare the redemption price ($10.00 per

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[129] *See In re Hennessy Capital Acquisition Corp. IV S'holder Litig.*, 318 A.3d 306, 327 (Del. Ch. 2024) (finding that directors do not breach their fiduciary duties by "failing to disclose information that was kept from them" by their counterparty), *aff'd*, 337 A.3d 1214 (Del. 2024).

[130] *See, e.g.*, *In re Finserv Acquisition Corp., SPAC Litig.*, 2024 WL 4472073 (Del. Ch. Oct. 10, 2024) (ORDER AND FINAL JUDGMENT) (approving $9.5 million settlement with $0.41 per share recovery); *QuantumScape*, 2025 WL 1927921 (ORDER AND FINAL JUDGMENT) (approving $8.75 million settlement with $0.58 per share recovery); *Yu v. RMG Sponsor*, C.A. No. 2021-0932-NAC (Del. Ch. Oct. 18, 2024) (TRANSCRIPT) ("*RMG Sponsor* Tr.") (approving $11.99 million settlement with $0.52 per share recovery); *Drulias v. Apex Tech. Sponsor LLC*, 2025 WL 1913626 (Del. Ch. July 10, 2025) (ORDER AND FINAL JUDGMENT) (approving $14.4 million settlement with $0.41 per share recovery); *MultiPlan*, 2023 WL 2329706 (ORDER AND FINAL JUDGMENT) ($0.44 per share recovery); *In re GeneDX DE-SPAC Litig.*, C.A. No. 2023-0140-PAF (Del. Ch. Dec. 2, 2024) (TRANSCRIPT) ("*GeneDX* Tr.") ($0.47 per share recovery).

share) to the true net cash per share underlying Decarb's shares (approximately $7.28). This approach yields damages of $2.72 per share (*i.e.*, Class damages of approximately $55.7 million). The Settlement provides Class Members approximately 15.8% of this potential post-trial damages figure – which is in line with other recent settlements approved by the Court – and eliminates the delay and risk of trial.[131]

There was also a real chance that any award to Plaintiff and the Class could be limited to nominal damages if Plaintiff could not prove, or if the Settling Defendants rebutted, a presumption of reliance and causation. A potential nominal damages award could range from $10.24 million ($0.50 per share) to $41 million ($2.00 per share). In such a situation, the Settlement represents a recovery of between 21% and 86%.

In exchange for this immediate cash recovery for the Class, Plaintiff agreed to the following release of claims:

> "Released Plaintiff's Claims" means, as against the Released Defendant Parties, to the fullest extent authorized by Delaware law, any and all manner of claims, including Unknown Claims, suits, actions, causes of action, demands, liabilities, losses, rights, obligations, duties,

[131] *See, e.g., Finserv* Tr. (15.7% of potential net cash per share damages); *Drulias v. Apex Tech. Sponsor LLC*, C.A. No. 2024-0094-LWW (Del. Ch. July 10, 2025) (TRANSCRIPT) (14.2% of potential net cash per share damages); *Makris v. Ionis Pharms., Inc.*, C.A. No. 2021-0681-LWW (Del. Ch. Oct. 11, 2022) (TRANSCRIPT) (9.53%); *Dell Class V* (9.34%); *In re Amtrust Fin. Serv., Inc.*, Consol. C.A. No. 2018-0396-LWW (Del. Ch.) (9.2%).

> damages, diminution in value, disgorgement, debts, costs, expenses, interest, penalties, fines, sanctions, fees, attorneys' fees, expert or consulting fees, agreements, judgments, decrees, matters, allegations, issues, and controversies of any kind, nature, or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or unapparent, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, whether based on state, local, federal, foreign, statutory, regulatory, or common law or equity or otherwise, that (a) Plaintiff or any other member of the Class individually or on behalf of the Class: (i) alleged, asserted, set forth, or claimed against the Released Defendant Parties in the Action or in any other action in any other court, tribunal, proceeding, or other forum, or (ii) could have alleged, asserted, set forth, or claimed against the Released Defendant Parties in the Action or in any other action in any other court, tribunal, proceeding, or other forum; and (b) that are based upon, arise out of, or relate in any way to the impairment of the redemption rights of any Decarb Class A stockholder. Notwithstanding the above, (i) any claim to enforce the Stipulation or Judgment shall not be released as to the Settling Defendants; and (ii) the Non-Released Plaintiff's Claims shall not be released as to the Legacy Hyzon Defendants.

This release here is narrower than the settlement release approved by the Court in *MultiPlan* and other similar cases.[132] For example, in *Multiplan*, the "Plaintiffs' Released Claims" included any of the plaintiffs or class's claims that could have been asserted "directly, representatively, derivatively, or in any other capacity that" relate to or concern "(i) the Business Combination, (ii) the Proxy, (iii) any other disclosures relating to or concerning the Business Combination or the Company, or (iv) the

[132] *See MultiPlan*, 2023 WL 2329706; *In re Lordstown Motors Corp. S'holders Litig.*, C.A. No. 2021-1066-LWW (Del. Ch. July 5, 2024) (ORDER AND FINAL JUDGMENT); *GeneDx*, 2024 WL 4952176.

control or participation of any of Defendants' Released Parties with respect to any of the foregoing."[133] Similarly, in *In re GeneDx*, "Released Plaintiffs' Claims" encompassed clams that "relate to the ownership of [the SPAC] Class A common stock as of the Redemption Deadline through the close of the Merger, the Proxy, any other disclosure relating to or concerning the Merger, or the involvement of any of the Released Defendant Parties with respect to any of the foregoing."[134] In contrast, the release here is connected directly to the impairment of the Redemption Right. Accordingly, the release is appropriately tailored.

Finally, to date, no Class Member has objected to the Settlement after Plaintiff provided notice in the manner approved by the Court, further supporting the Court's approval of the Settlement.[135] In particular, the Notice provided, in easily understood language:

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[133] https://www.multiplanstockholderslitigation.com/Content/Documents/Stipulation.pdf at 17 and 18.

[134] *In re GeneDx De-SPAC Litig.*, C.A. No. 2023-0140-PAF, at 15-16 (Del. Ch. Aug. 16, 2024) (STIPULATION AND AGREEMENT OF COMPROMISE, SETTLEMENT, AND RELEASE).

[135] As the parties noted in their July 1, 2025 letter to the Court (D.I. 165), plaintiff in the action captioned *In re Hyzon Inc. Securities Litigation*, Case No. 6:21-cv-06612-MAV-MW (W.D.N.Y.) (the "Federal Securities Action") filed two motions: (1) a Motion to Enjoin the Proposed Class Settlement in the *Malork* Chancery Court Action (the "Motion to Enjoin") and (2) a Motion to Expedite Hearing on Motion to Enjoin the Proposed Class Settlement in the *Malork* Chancery Court Action (the "Motion to Expedite"). On June 30, 2025, the District Court denied the Federal Securities Action plaintiff's motion to expedite. (Dkt 117).

> (i) the location, date, and time of any hearing; (ii) the nature of the action; (iii) the definition of the class; (iv) a summary of the claims, issues, defenses, and relief that the class action sought; (v) a description of the terms of the proposed dismissal or settlement; (vi) any award of attorney's fees or expenses, or any representative-party award, that will be sought if the proposed dismissal or settlement is approved; (vii) instructions for objectors; (viii) that additional information can be obtained by contacting class counsel; (ix) how to contact class counsel; and (x) not to contact the Court with questions about the terms of the proposed dismissal or settlement.[136]

The Settlement Administrator posted the Notice on the website it established for this Settlement and mailed the Notice, by first class U.S. mail or other mail service if mailed outside the U.S., postage prepaid, to each Class Member at their last known address who could be identified: (i) as a result of receiving a list from DCRB Sponsor of Decarb Class A common stockholders of record as of the Merger's record date; (ii) by Plaintiff serving a subpoena on Decarb's transfer agent for the Merger; or (iii) by the Settlement Administrator who contacted entities which commonly hold securities in "street name" as nominees for the benefit of their customers who are beneficial purchasers of securities to identify beneficial holders of Decarb's Class A common

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On July 14, 2025, the District Court granted in part the Federal Securities Action defendants' motions to dismiss, which included a dismissal of the Federal Securities Action plaintiff's Section 14(a) claims (Dkt. 119). On August 15, 2025, the Federal Securities Action plaintiff filed a motion for leave to file a fourth amended complaint ("Motion to Amend") (Dkt. 125). The Motion to Enjoin and Motion to Amend remain pending.

[136] Ct. Ch. R. 23(f)(3)(D).

stock on or around the Redemption Deadline.[137] The Settlement Administrator also published the Summary Notice over the *PR Newswire*.[138]

The deadline for objections is September 19, 2025. As of this brief's filing, there have been no objections to the proposed Settlement.

B. The Settlement Is the Result of Hard-Fought, Arms'-Length Negotiations Between Experienced Counsel Before an Experienced and Well-Respected Mediator

When evaluating the fairness of a settlement, Delaware courts also scrutinize the negotiations that led up to the settlement and heavily favor settlements that resulted from arm's-length negotiations.[139] Here, as discussed above, the Parties, informed through considerable discovery about the strengths and weaknesses of their positions, arrived at the Settlement after extensive and hard-fought negotiations during a joint mediation session with an experienced mediator.

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[137] Ewashko Aff., ¶¶ 2-9.

[138] *Id.*, ¶ 10.

[139] *See Ryan*, 2009 WL 18143, at *5 (finding settlement "fair, reasonable, and adequate" when reached after "vigorous arms-length negotiations following meaningful discovery").

C. Counsel's Experience and Opinion Weigh in Favor of Settlement Approval

The fact that experienced, sophisticated counsel support the Settlement also weighs in favor of approval.[140] Counsel here include attorneys at Robbins Geller Rudman & Dowd LLP ("RGRD"), Robbins LLP, and Andrews & Springer LLC ("A&S"), highly regarded firms that have substantial experience in negotiating settlements of complex derivative and class actions and a lengthy track record in this Court—including litigating numerous de-SPAC merger redemption rights cases such as this that have survived motions to dismiss and have proceeded far into discovery—and have secured substantial benefits on behalf of stockholders.[141] Counsel believe that the Settlement is fair and in the best interests of the Class. Counsel's opinion in this regard is shaped not only by their depth of experience, but by their deep knowledge of this case gained from their review of discovery materials. Counsel's opinion further weighs in favor of approving the Settlement.

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[140] *See Polk*, 507 A.2d at 536 (stating that the Court considers "the views of the parties involved" in determining "the overall reasonableness of the settlement").

[141] *See, e.g.*, *GeneDx* Tr.; *RMG Sponsor* Tr.; *In re Gores Holdings IV, Inc. Stockholder Litig.*, C.A. No. 2023-0284-LWW (Del. Ch. July 15, 2025) (TRANSCRIPT); *In re Kensington-QuantumScape De-SPAC. Litig.*, C.A. No. 2022-0721-JTL (Del. Ch. July 11, 2025) (TRANSCRIPT); *Newman v. Sports Ent. Acq. Hldgs. LLC*, C.A. No. 2023-0538-LWW (Del. Ch. July 11, 2025) (REVISED STIPULATION AND AGREEMENT OF COMPROMISE, SETTLEMENT, AND RELEASE); *see also Farzad, et al. v. Trasimene Capital, FT, LP II, et al.*, C.A. No. 2023-0193-JTL (Del. Ch. Jan. 30, 2024) (TRANSCRIPT); *Offringa v. dMY Sponsor II, LLC*, C.A. No. 2023-0929-LWW (Del. Ch. July 30, 2024) (TRANSCRIPT).

III. THE PLAN OF ALLOCATION IS REASONABLE AND APPROPRIATE

Plaintiff's proposed plan of allocation (the "Plan of Allocation") requires Class Members to submit proofs of claim demonstrating their membership in the Class and any economic loss sustained as a result of not redeeming their shares of Decarb Class A common stock in connection with the Merger. Class Members that demonstrate an economic loss will receive a *pro rata* portion of the Settlement based on this harm. In addition, all Class Members who submit a claim will receive a "nominal" damage amount in recognition of the direct harm to their redemption rights. By recognizing that only some Class Members suffered economic losses (and that such losses are of varying degree) and that all Class Members were harmed by the impairment of their redemption right regardless of whether they suffered an economic loss, this method of allocation provides for an equitable distribution of *MultiPlan* settlement proceeds. The Court has approved similar plans of allocation.[142]

[142] *GeneDx*, 2024 WL 4952176, at *3; *Siseles*, 2024 WL 5046087, at *3; *RMG Sponsor*, 2024 WL 4547457, at *3; *see also In re TS Innovation Acquisitions Sponsor, LLC S'holder Litig.*, C.A. No. 2023-0509-LWW, at 10 (Del. Ch. Mar. 27, 2025) (TRANSCRIPT) (calling a similar plan of allocation "smart" and stating "I really like it.... [I]t makes sense to me. People are selling or holding at different times.").

IV. THE REQUESTED FEE AND EXPENSE AWARD SHOULD BE GRANTED

Plaintiff moves for an all-in fee and expense award of $1.76 million (*i.e.*, 20% of the $8.8 million settlement fund, inclusive of $109,064.20 in expenses reasonably incurred in connection with litigating this Action). The Settlement provides a strong outcome for the Class, with an immediate and substantial recovery. This requested fee and expense award is supported by the Court's precedent, and Plaintiff's request is reasonable given the substantial benefit the Settlement provides compared against the risks and the thousands of hours Counsel have devoted to the prosecution of this Action, on a fully contingent basis.

A. Legal Standard

This Court may award attorneys' fees to counsel whose efforts conferred a common benefit.[143] The determination of any attorney fee and expense award is left to the Court's discretion.[144] The Court considers the *Sugarland* factors, including: "(1) the results achieved; (2) the time and effort of counsel; (3) the relative complexities of the litigation; (4) any contingency factor; and (5) the standing and

[143] *See, e.g.*, *Americas Mining Corp. v. Theriault*, 51 A.3d 1213, 1255 (Del. 2012); *Tandycrafts, Inc. v. Initio Partners*, 562 A.2d 1162, 1164 (Del. 1989).

[144] *Theriault*, 51 A.3d at 1254-55 (upholding fee award of over $304 million); *Sugarland Indus., Inc. v. Thomas*, 420 A.2d 142, 149-50 (Del. 1980).

ability of counsel involved."[145] Delaware courts have assigned the greatest weight to the benefit achieved in litigation.[146]

Each of the *Sugarland* factors fully supports the requested fee award here.

B. The Benefits of the Settlement Are Substantial

As explained above, the proposed Settlement confers substantial and quantifiable financial benefits on the Class. As the factor accorded the most weight by the Court, this substantial recovery counsels heavily in favor of Plaintiff's requested fee and expense award.[147] The Court has stated that "the dollar amount of the fund created . . . is the heart of the *Sugarland* analysis."[148]

Plaintiff submits that he engaged in "meaningful litigation efforts" in which fees between 15% and 25% are awarded.[149] Plaintiff drafted three detailed complaints and moved for leave to supplement his First Amended Complaint weeks after Vice

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[145] *Theriault*, 51 A.3d at 1254 (citing *Sugarland*, 420 A.2d at 149).

[146] *Id.*; *see also Julian v. E. States Constr. Serv., Inc.*, 2009 WL 154432, at *2 (Del. Ch. Jan. 14, 2009) ("In determining the size of an award, the courts assign the greatest weight to the benefit achieved in the litigation.") (citing *Franklin Balance Inv. Fund v. Crowley*, 2007 WL 2495018, at *8 (Del. Ch. Aug. 30, 2007)).

[147] *Theriault*, 51 A.3d at 1254; *Gatz v. Ponsoldt*, 2009 WL 1743760, at *3 (Del. Ch. June 12, 2009); *In re Orchard Enters., Inc. S'holder Litig.*, 2014 WL 4181912, at *8 (Del. Ch. Aug. 22, 2014) ("A percentage of a low or ordinary recovery will produce a low or ordinary fee; the same percentage of an exceptional recovery will produce an exceptional fee.").

[148] *Seinfeld v. Coker*, 847 A.2d 330, 336 (Del. Ch. 2000).

[149] *Theriault*, 51 A.3d at 1259.

Chancellor Will's decision denying defendants' motion to dismiss in *Delman v. GigAcquisitions3, LLC*, C.A. No. 2021-0679-LWW.[150] Plaintiff's motion for leave was denied following a hearing, but Plaintiff still defeated the Settling Defendants' motion to dismiss the First Amended Complaint that addressed then-novel legal issues.

In addition, the Parties engaged in substantial document and other written discovery over the course of a year: (i) Plaintiff propounded requests for the production of documents and interrogatories to the Settling Defendants and served subpoenas *duces tecum* and *ad testificandum* on nine third parties, including Hyzon; (ii) Plaintiff moved to compel certain documents from Hyzon, which the Court granted in part after a telephonic hearing; (iii) the Settling Defendants served responses and objections to Plaintiff's requests for production of documents and interrogatories and supplemental responses and objections to Plaintiff's interrogatories; (iv) the Settling Defendants, Hyzon, and other third parties produced over 250,000 documents consisting of over 810,000 pages in response to Plaintiff's document requests and subpoenas; (v) the Settling Defendants propounded 36 requests for the production of documents and 40 interrogatories to Plaintiff; (vi) Plaintiff served responses and objections to the Settling Defendants' requests for production

[150] 288 A.3d 692.

and interrogatories; (vii) Plaintiff produced 75 documents consisting of 3,947 pages in response to the Settling Defendants' document requests; and (viii) Plaintiff prepared answers and objections to the Settling Defendants' interrogatories. The Settling Defendants also deposed Plaintiff on April 3, 2024.

Finally, Plaintiff undertook substantial risk in filing this Action in the first place with limited upside in terms of absolute dollars. When Plaintiff filed his initial complaint, *MultiPlan* was the only breach of fiduciary duty class action arising from a de-SPAC merger transaction that had overcome a motion to dismiss. Moreover, Decarb's IPO involved the issuance of only 22,572,502 shares, a $225.7 million offering, and therefore would be considered a "micro cap" company.[151] As this Court has recognized, the "small issuers are the cases where it turns out we most need plaintiff's lawyers to be looking" and the Court should sufficiently incentivize attorneys to take on high-risk litigation where the total potential damages are not great in absolute terms.[152]

Plaintiff's requested fee and expense award of 20% of the Settlement Amount (inclusive of expenses), is reasonable and appropriate given this Court's precedent in

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[151] *See, e.g.*, https://www.investopedia.com/terms/m/microcapstock.asp (defining "micro cap" as a company with a market capitalization of less than $300 million).

[152] *Browne v. Layfield*, C.A. No. 2024-0079-JTL, at 38 (Del. Ch. Sept. 5, 2024) (TRANSCRIPT).

similar de-SPAC merger-based class actions with comparable litigation activity, such as *MultiPlan*, *Lordstown*, *Finserv*, and *GeneDx*. In *MultiPlan*, the Court awarded plaintiffs' counsel an all-in fee of 20% of the recovery, while in *Lordstown*, the Court granted awarded plaintiffs' counsel a fee of 22.5% of the net recovery, along with reimbursement of expenses.[153] Both cases settled before depositions and expert discovery. In *GeneDx*, the Court award plaintiff's counsel an all-in fee of 19.5% of the recovery where the defendants answered the complaint, over 100,000 pages of documents were produced, but no depositions or motion practice occurred.[154] Plaintiff's Counsel respectfully submit that the requested 20% all-in fee award is reasonable and appropriate.[155]

[153] *MultiPlan*, C.A. No. 2021-0300-LWW (awarding 20% all-in fee award; 734,000 pages of documents produced; no depositions); *Lordstown*, C.A. No. 2021-1066-LWW, Order at ¶ 11 (awarding reimbursement of expenses plus fees equating to 22.5% of the net settlement fund; motion to dismiss withdrawn; over 250,000 pages of documents produced, no depositions).

[154] *GeneDx*, 2024 WL 4952176.

[155] *See Berteau v. Glazek*, 2023 WL 8618261 (Del. Ch. Dec. 12, 2023) (ORDER AND FINAL JUDGMENT) (awarding fees equating to 20% of the $5 million net settlement fund where settlement occurred after motion to dismiss and limited (less than 1,500 pages) document discovery).

C. The Contingent Nature of Counsel's Representation Supports the Requested Fee

The "second most important factor" in the Court's *Sugarland* analysis is the contingent nature of counsel's representation.[156] It is the "public policy of Delaware to reward this risk-taking in the interests of shareholders."[157] Contingent representation entitles plaintiff's counsel to both a "risk" premium and an "incentive" premium on top of the value of their standard hourly rates.[158]

Here, as set forth in the accompanying attorney affidavits,[159] Plaintiff's Counsel pursued this case on a fully contingent basis. Accordingly, in undertaking this representation, they incurred all of the classic contingent fee risks, including the

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[156] *Dow Jones & Co. v. Shields*, 1992 WL 44907, at *2 (Del. Ch. Jan. 10, 1992).

[157] *In re Plains Res. Inc. S'holders Litig.*, 2005 WL 332811, at *6 (Del. Ch. Feb. 4, 2005); *see also In re First Interstate Bancorp Consol. S'holder Litig.*, 756 A.2d 353, 365 (Del. Ch. 1999) (noting that it is "consistent with the public policy" of Delaware to "reward this sort of risk taking in determining the amount of a fee award"), *aff'd sub nom. First Interstate Bancorp v. Williamson*, 755 A.2d 388 (Del. 2000).

[158] *Seinfeld*, 847 A.2d at 337; *see also Crowley*, 2007 WL 2495018, at *12 ("Fee awards should encourage future meritorious lawsuits by compensating the plaintiffs' attorneys for their lost opportunity cost (typically their hourly rate), the risks associated with the litigation, and a premium.") (citations omitted).

[159] Affidavit of Erik W. Luedeke at ¶ 3 (filed herewith) ("Luedeke Aff."); Affidavit of Gregory E. Del Gaizo at ¶ 3 (filed herewith) ("Del Gaizo Aff."); Affidavit of David M. Sborz at ¶ 3 (filed herewith) ("Sborz Aff."); Affidavit of Aaron T. Morris at ¶ 2 (filed herewith) ("Morris Aff.").

ultimate risk—no recovery whatsoever and a loss of all time and expenses incurred. This factor thus supports the requested fee award.

D. The Time and Efforts Expended by Counsel Support the Requested Fee Award

Fee awards should neither penalize counsel for early victory nor incentivize dragging out litigation or expending unnecessary hours.[160] Accordingly, the time spent by counsel in this litigation should only serve as a cross-check on the reasonableness of the fee award.[161] Before reaching agreement on the Stipulation, counsel's efforts included: (i) drafting and filing the initial and amended complaints; (ii) reviewing, opposing, and defeating the Settling Defendants' motion to dismiss on novel issues; (iii) requesting, providing, and reviewing discovery materials; (iv) compelling additional discovery materials; (v) preparing for and defending Plaintiff's deposition; and (vi) engaging in hard-fought settlement negotiations with the assistance of an experienced mediator.

Counsel spent 7,897.25 hours litigating this Action from inception through the July 31, 2024 agreement in principle to settle the Action.[162] This amounts to a

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[160] *Sciabacucchi v. Salzberg*, 2019 WL 2913272, at *6 (Del. Ch. July 8, 2019).

[161] *Id.* (citing *In re Sauer-Danfoss Inc. S'holders Litig.*, 65 A.3d 1116, 1138 (Del. Ch. 2011)).

[162] Del Gaizo Aff. at ¶ 5; Luedeke Aff. at ¶ 5; Sborz Aff. at ¶ 5; Morris Aff. at ¶ 4.

lodestar value of $5,043,810.50.[163] Robbins Geller, Robbins, and A&S also incurred $109,064.20 in expenses.[164] The requested fee award implies an hourly rate of approximately $638.68 per hour and a lodestar multiplier of approximately 0.35x, a substantial discount to counsel's lodestar. Both metrics are well below the range typically awarded by the Court.[165]

Accordingly, the substantial efforts of Plaintiff's Counsel support the requested fee award.

E. The Action Implicates Complex Issues of Fact and Law

In determining an appropriate award of fees and expenses, the Court also considers the complexity of the litigation. "[L]itigation that is challenging and

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[163] *Id.*; Counsel spent an additional 586.55 hours from August 1, 2024 through the execution of the Stipulation pursuing claims against the Legacy Hyzon Defendants and documenting the Settlement, amounting to an additional $350,484.00 in lodestar.

[164] Del Gaizo Aff. at ¶ 8; Luedeke Aff. at ¶ 8; Sborz Aff. at ¶ 8.

[165] *See, e.g.*, *In re Versum Materials, Inc. S'holder Litig.*, C.A. No. 2019-0206-JTL, at 81 (Del. Ch. July 16, 2020) (TRANSCRIPT) (approving fees equivalent to an hourly rate of over $10,000); *Sciabacucchi*, 2019 WL 2913272, at *6 (fees equivalent to $11,262.26 per hour were reasonable); *In re Medley Cap. Corp. S'holders Litig.*, Consol. C.A. No. 2019-0100-KSJM, at 67-68 (Del. Ch. Nov. 19, 2019) (TRANSCRIPT) (observing a $5,989 hourly rate would not be "beyond the bounds of reasonableness"); *In re Saba Software, Inc. S'holder Litig.*, 2018 WL 4620107 (Del. Ch. Sept. 26, 2018) (awarding a 3x lodestar multiple); *Vero Beach Police Officers' Ret. Fund v. Bettino*, 2018 WL 6330140 (Del. Ch. Dec. 3, 2018) (awarding an effective hourly rate of $3,165 and a 5.1x lodestar multiplier); *In re Pilgrim's Pride Corp. Deriv. Litig.*, 2020 WL 474676 (Del. Ch. Jan. 28, 2020) (awarding an effective hourly rate of $4,511.09 and a 7.0x lodestar multiplier); *Carr v. New Enter. Assocs., Inc.*, 2019 WL 1491579 (Del. Ch. Apr. 4, 2019) (awarding an effective hourly rate of $1,030 and an 7.2x lodestar multiplier).

complex supports a higher fee award."[166] This Action is complex both legally and factually.

Although Plaintiff's claims in this Action presented well-established legal challenges concerning Defendants' fiduciary duties, the claims involved novel questions and legal issues, including (i) the contours of what constitutes impairment of stockholder redemption rights; (ii) the proper measure of damages for a claim based on impairment of stockholder redemption rights; (iii) whether Plaintiff would need to prove reliance and causation; and (iv) whether a non-settlement class would be certified. No de-SPAC merger case has gone to trial yet, creating further uncertainties as to how the Court would wrestle with these issues. These uncertainties resulted in the potential for complex legal battlegrounds that have not yet been tested on appeal.

Further, the factual issues presented in this Action were likewise complex. Plaintiff had to delve into the web of interrelationships between each of the Settling Defendants, including their various businesses, directorships, and their interrelatedness and financial interests. Plaintiff had to review and analyze discovery materials to ascertain the status of Legacy Hyzon's business operations and emerging technology, and the likely value of Legacy Hyzon at the time of the Merger.

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[166] *Activision*, 124 A.3d at 1072.

The legal and factual complexity at issue in this litigation supports the requested fee and expense award.

F. Counsel Is Well-Regarded with a History of Success Before This Court

The Court also considers the standing and ability of counsel when determining the reasonableness of a fee and expense award.[167]

Here, Plaintiff's Counsel are experienced in stockholder class and corporate governance litigation, with a lengthy track record of obtaining exceptional recoveries for stockholders in challenging and complex cases. Plaintiff's Counsel have participated in some of the largest settlement and post-trial recoveries for plaintiffs in class and derivative litigation before this Court.[168] Plaintiff's Counsel respectfully submit that the Settlement is another strong recovery that extends this track record.

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[167] *See Sugarland*, 420 A.2d at 149.

[168] *See, e.g.*, *In re Dell Techs. Inc. Class V S'holders Litig.*, 326 A.3d 686, 689 (Del. 2024) ($1 billion settlement, RGRD and A&S additional counsel); *In re Dole Food Co., Inc. S'holder Litig.*, 2015 WL 5052214 (Del. Ch. Aug. 27, 2015) ($148 million trial verdict, RGRD co-lead counsel); *Goldstein v. Denner*, 2024 WL 4182879 (Del. Ch. Sept. 12, 2024) ($124 million total settlement, RGRD co-lead counsel); *In re Viacom Inc. S'holder Litig.*, 2023 WL 4761807 (Del. Ch. July 25, 2023) ($122.5 million settlement, RGRD additional counsel); *In re Rural Metro Corp. S'holder Litig.*, 2015 WL 725425 (Del. Ch. Feb. 19, 2015) (partial settlement and post-trial recovery totaling $109.4 million, RGRD co-lead counsel); *In re Pattern Energy Group Inc. S'holders Litig.*, 2024 WL 2045461 (Del. Ch. May 6, 2024) ($100 million settlement, RGRD co-lead counsel); *City of Monroe Emps.' Ret. Sys. v. Murdoch*, 2018 WL 822498 (Del. Ch. Feb. 9, 2018) ($90 million settlement plus corporate governance reforms, Robbins LLP additional counsel); *In re Del Monte Foods Co. S'holder Litig.*, 2011 WL 6008590 (Del. Ch. Dec. 1, 2011) ($89.4 million settlement, RGRD co-lead counsel); *City of Warren General Emps.' Ret. Sys. v. Alkire*, 2024 WL 3179324 (Del. Ch.

The standing of opposing counsel also may be considered in determining the reasonableness of a fee award.[169] The Settling Defendants are represented by experienced, skillful, and well-respected law firms who vigorously defended their clients' interests. The ability of opposing counsel enhances the significance of the benefit achieved for the Class.

V. THE COURT SHOULD APPROVE AN INCENTIVE AWARD FOR THE PLAINTIFF

The Court should approve the payment of a $10,000 incentive award to the Plaintiff, to be paid out of the fees awarded to Plaintiff's Counsel, to compensate him for the time and effort that he devoted to this matter. This Court has recognized that a modest incentive fee is appropriate where, as here, Plaintiff has "step[ed] forward and take[n] the risk" of getting involved in representative litigation in a culture in which people increasingly are unwilling to "do things for the benefit of others."[170]

June 25, 2024) ($71 million settlement, RGRD co-lead counsel); *In re Tesla Motors, Inc. S'holder Litig.*, 2020 WL 4795384 (Del. Ch. Aug. 17, 2020) ($60 million partial settlement, RGRD co-lead counsel); *In re Good Tech. Corp. S'holder Litig.*, C.A. No. 11580-VCL, 2018 WL 1672986, 2018 WL 4944082 (Del. Ch. Apr. 5 & Nov. 9, 2018) (settlements totaling $52 million, or 1.5 times common stockholders' merger consideration, RGRD co-lead counsel).

[169] *See, e.g.*, *Dell Class V*, 300 A.3d at 727 (considering that "an army of skilled defense counsel fought the plaintiffs at every turn").

[170] *In re EZCorp Inc. Consulting Agreement Deriv. Litig.*, C.A. No. 9962-VCL (Del. Ch. Apr. 3, 2018) (TRANSCRIPT), at 22.

In determining the appropriateness of an incentive fee, the Court considers the time and effort expended by the class representative and the size of the benefit to the class.[171] Here, Plaintiff monitored counsel's work, reviewed pleadings, and regularly communicated with counsel regarding litigation strategy and significant litigation developments. In addition, Plaintiff produced documents, prepared answers and objections to 40 interrogatories, and prepared for and sat for his in-person deposition. These efforts amply support the modest $10,000 award requested.[172]

VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court approve the Settlement and Plan of Allocation, certify the Class pursuant to Court of Chancery

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[171] *Raider v. Sunderland*, 2006 WL 75310, at *1 (Del. Ch. Jan. 5, 2006).

[172] *See In re AMC Ent. Holding, Inc. S'holder Litig.*, 2023 WL 5165606, at *41 (Del. Ch. Aug. 11, 2023) ("In typical baseline circumstances, an incentive award of $5,000 rewards competent participation."), *aff'd*, 319 A.3d 310 (Del. 2024); *see also Morris v. Spectra Energy Partners (DE) GP, LP*, C.A. No. 2019-0097-SG (Del. Ch. May 19, 2022) (ORDER AND FINAL JUDGMENT) ($10,000 incentive fee award for plaintiff who produced documents and sat for deposition); *In re Handy & Harman, Ltd. S'holder Litig.*, 2019 WL 6529714 (Del. Ch. Dec. 3, 2019) (ORDER AND FINAL JUDGMENT) (same); *Doppelt v. Windstream Holdings, Inc.*, 2018 WL 3069771 (Del. Ch. June 20, 2018) (ORDER AND FINAL JUDGMENT) ($15,000 incentive fee award for one plaintiff and $7,500 incentive fee award for another plaintiff who each sat for deposition); *Dell Class V*, 300 A.3d at 733-34 (approving incentive award of $50,000); *Activision*, 124 A.3d at 1076-77 (approving incentive award of $50,000); *Forsythe v. ESC Fund Mgmt. Co. (U.S.), Inc*., 2012 WL 1655538, at *8 (Del. Ch. May 9, 2012) (approving incentive awards of $35,000 and $20,000).

Rules 23(a), 23(b)(1), and 23(b)(2), award Plaintiff's Counsel the requested fee award, and authorize the payment of the requested incentive award from counsel's fees.

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